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FILED
Superior Court of California
County of Los Angeles

MAY 30 2018

Sherri R. Carter, Executive Officer/Clerk
By Rita Nazaryan, Deputy

Attorneys for Plaintiff ELIANA VIVIER, on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE

ELIANA VIVIER, on behalf of herself and all others similarly situated,

Plaintiffs,

v.

UNIVERSITY OF SOUTHERN CALIFORNIA, a California Corporation, BOARD OF TRUSTEES OF THE UNIVERSITY OF SOUTHERN CALIFORNIA, an entity, form unknown; and GEORGE TYNDALL, M.D., an individual, and DOES 1 to 100, inclusive;

Defendants.

CLASS ACTION

Case No.: BC707881

COMPLAINT FOR:

- 1. VIOLATION OF UNRUH ACT (CC §51);
2. SEXUAL HARASSMENT (CC §51.9);
3. VIOLATION OF BANE ACT (CC §52.1);
4. GENDER VIOLENCE (CC §52.4);
5. SEXUAL ASSAULT;
6. SEXUAL BATTERY (CC §1708.5);
7. CONSTRUCTIVE FRAUD (CC §1573);
8. SEXUAL ABUSE AND HARASSMENT IN THE EDUCATIONAL SETTING (EDUCATION CODE §220);
9. VIOLATION OF THE CALIFORNIA EQUITY IN HIGHER EDUCATION ACT (EDUCATION CODE §66270);
10. NEGLIGENCE;
11. NEGLIGENCE PER SE;
12. NEGLIGENT HIRING;
13. SUPERVISION, AND/OR RETENTION;
14. NEGLIGENT FAILURE TO WARN, TRAIN, AND/OR EDUCATE;
15. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
16. VIOLATION OF TITLE IX (20 U.S.C. §1681); AND
17. UNFAIR BUSINESS PRACTICES (B&PC §17200)

DEMAND FOR JURY TRIAL

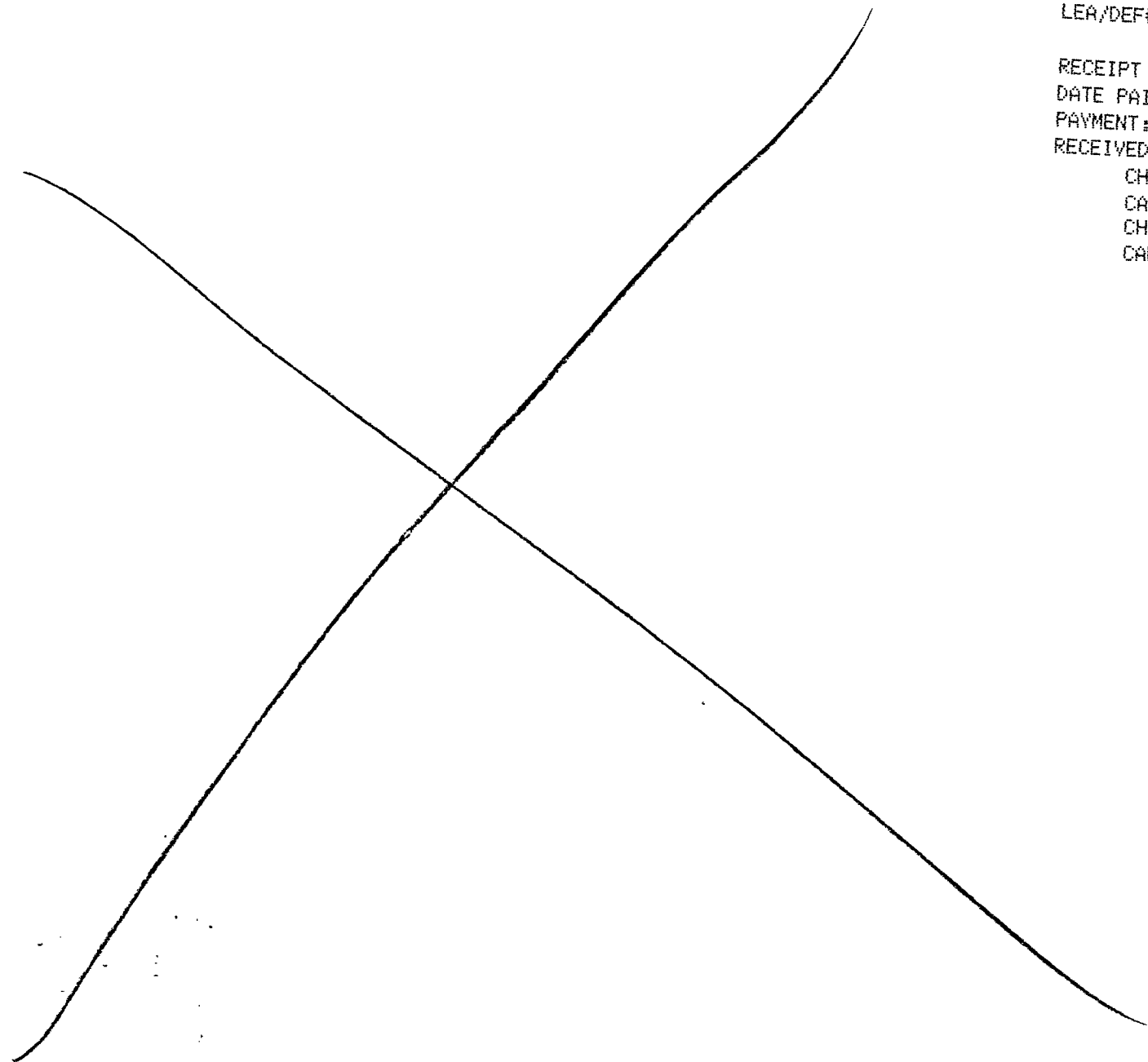
05/31/2018
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SSC. 9

CIT/CASE: BC707887  
LEA/DEF#:

RECEIPT #: CCH477461010  
DATE PAID: 05/30/18 02:55 PM  
PAYMENT: \$1,435.00 310  
RECEIVED:

CHECK:	\$1,435.00
CASH:	\$0.00
CHANGE:	\$0.00
CARD:	\$0.00



1 Plaintiff ELIANA VIVIER (hereinafter, "Ms. Vivier"), an individual on behalf of herself  
2 and all others similarly situated (hereinafter collectively referred to as "Plaintiffs"), hereby files  
3 this Complaint against Defendants UNIVERSITY OF SOUTHERN CALIFORNIA (hereinafter  
4 "USC"), BOARD OF TRUSTEES OF THE UNIVERSITY OF SOUTHERN CALIFORNIA  
5 (hereinafter "The Board"); GEORGE TYNDALL, M.D. (hereinafter "Dr. Tyndall") and DOES 1 to  
6 100, inclusive (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and  
7 believe, and on the basis of that information and belief, allege as follows:

8 **FACTUAL ALLEGATIONS**

9 1. Ms. Vivier is a twenty-eight-year-old Caucasian American woman who attended  
10 law school at USC Gould School of Law from August 2014 to May 2017.

11 2. During the time she attended law school, in or about 2016, Ms. Vivier was  
12 subjected to medical examination by Dr. Tyndall approximately three times. During at least one  
13 of these medical examinations, Ms. Vivier was left alone in the examining room with Dr.  
14 Tyndall during the medical examination. Further, on at least one other occasion, Ms. Vivier was  
15 left alone during a non-examination meeting with Dr. Tyndall.

16 3. During his medical examinations of Ms. Vivier, Dr. Tyndall molested, sexually  
17 abused, and sexually harassed Ms. Vivier, including but not limited to by an unnecessarily slow  
18 and intense inspection of every part of Ms. Vivier's body, down to the area between her  
19 buttocks. Dr. Tyndall also made grossly inappropriate remarks while he had his fingers inside  
20 Ms. Vivier's vagina and would do the same thing while touching other parts of her body.

21 4. Dr. Tyndall would insert his fingers in Ms. Vivier's vagina as a pretense for  
22 ensuring that his speculum would "fit." He also went into great detail about the different sizes of  
23 specula available to accommodate different sized women.

24 5. At one examination, Dr. Tyndall inserted one finger inside Ms. Vivier's vagina,  
25 paused, and then announced "Oh, I think it will fit. Let's put two fingers in!," or substantially  
26 similar words to that effect.

27 6. Further, when Dr. Tyndall was once in the middle of performing a physical  
28 examination of Ms. Viver's abdomen, he commented on how fit she was, that he could tell she

1 was a runner, and voiced his admiration of her kegel muscles, stating “I can tell you are a runner  
2 from these kegels!”, or substantially similar words to that effect.

3 7. During his medical examinations of Ms. Vivier, Dr. Tyndall also had  
4 inappropriate conversations regarding Ms. Vivier’s sexual orientation. For example, when Dr.  
5 Tyndall learned that Ms. Vivier was a lesbian, he advised her that she would not need birth  
6 control since “lesbianism is your form of birth control.”

7 8. Ms. Vivier placed trust in Dr. Tyndall since he was a physician, who worked for a  
8 prestigious and credible institution such as USC, but she also suspected that this behavior was  
9 strange.

10 9. However, Ms. Vivier had little choice but to continue to subject herself to medical  
11 examination by Dr. Tyndall because he was the only gynecology physician readily available at  
12 the USC student health center.

13 10. Ms. Vivier recently read a news article<sup>1</sup> in the Los Angeles Times about  
14 Defendants USC, The Board, and Dr. Tyndall that brought forth the realization that she had been  
15 betrayed and violated by the very institution that she once had much pride in, and the horror of  
16 the reality of Dr. Tyndall’s “medical care” set in.

17 11. Ms. Vivier is particularly upset about USC’s concealment of the facts about Dr.  
18 Tyndall for not just years but decades, thus allowing Dr. Tyndall to prey on countless women  
19 and satisfy his perverted urges under the guise of providing medical care.

20 12. USC’s failure to disclose these facts, and in fact actively conceal them, has  
21 allowed Dr. Tyndall, a sexual predator acting as a medical professional, to exploit Ms. Vivier  
22 and numerous other student-patients, with absolutely no regard for their physical or mental state,  
23 safety, privacy, or dignity.

24 13. Nearly thirty years ago, in 1989, USC and/or The Board hired Dr. Tyndall at their  
25 student health clinic as the sole full-time gynecologist. Over the span of three decades, or about  
26 sixty school semesters, Dr. Tyndall treated tens of thousands of female students, many of them

27  
28 <sup>1</sup> “A USC doctor was accused of bad behavior with young women for years. The University let  
him continue treating students,” by Harriet Ryan, Matt Hamilton and Paul Pringle, May 16,  
2018, The Los Angeles Times.

1 teenagers seeing a gynecologist for the first time. Few, if any, who lay down on Dr. Tyndall's  
2 exam table at the Student Health Center knew that he had been accused repeatedly of misconduct  
3 toward young patients. In Ms. Vivier's case, she would certainly never have consented to Dr.  
4 Tyndall's care if she had any inkling of what was really going on at USC.

5 14. When USC hired Dr. Tyndall, he told people he had selected the job over higher  
6 paying opportunities so he could work with the bright, sophisticated women of what he often  
7 called "the Stanford of the South." According to DMV records, the license plate on his Acura  
8 declared his dedication to his job, reading "COED DOC."

9 15. In the 1990s, chaperones (who routinely accompanied Dr. Tyndall in the exam  
10 room) became alarmed about the frequency with which he used a camera during pelvic exams.  
11 Though gynecologists can have legitimate reasons to take pictures, including research, teaching  
12 and soliciting second opinions from colleagues, Dr. Tyndall's chaperones questioned his  
13 motivations. One chaperone recalled him taking multiple pictures of hundreds of patients'  
14 genitals, while another said she witnessed 50 to 100 patients photographed. Bernadette  
15 Kosterlitzky, a clinic nurse from 1992 to 2013, said that after a chaperone alerted administrators  
16 to the camera, then-Executive Director Dr. Lawrence Neinstein ordered it removed. "It was  
17 stopped as soon as it came to light," said Kosterlitzky, who ran the clinic's oversight committee.

18 16. Students also spoke up. In the early 2000s, at least three patients submitted letters  
19 complaining about inappropriate touching and remarks. The letters were read aloud during  
20 monthly committee meetings. It is unclear what action Dr. Neinstein took, if any. Dr. Neinstein's  
21 files contain at least eight complaints against Dr. Tyndall from 2000 to 2014. Some concern Dr.  
22 Tyndall's patient care. In a summary of the investigation into Dr. Tyndall, USC stated: "Several  
23 of the complaints were concerning enough that it is not clear today why the former health center  
24 director permitted Dr. Tyndall to remain in his position."

25 17. In 2013, the Student Health Clinic moved into a new building, named for Michel  
26 Dedeaux Engemann, a university trustee. In the Engemann Student Health Center, the troubling  
27 questions about Dr. Tyndall only intensified. Within months of the grand opening, chaperones  
28 observed behavior in Dr. Tyndall's exam room that unsettled them. Chaperones were concerned

1 about what Dr. Tyndall described as a full body scan for unusual moles. They said Dr. Tyndall  
2 frequently had women lie naked on the exam table while he slowly inspected every part of their  
3 body, down to the area between their buttocks. In fact, this was the exact type of examination  
4 that Dr. Tyndall conducted on Ms. Vivier.

5 18. While he worked, Dr. Tyndall would make unseemly comments, describing  
6 patients' skin as "flawless," "creamy" or "beautiful," according to multiple witnesses. He  
7 remarked on students' "perky breasts." "They stand right up there, don't they?" he was recalled  
8 as saying.

9 19. In the spring of 2013, eight chaperones reported concerns about Dr. Tyndall to  
10 their supervisor, veteran nurse Cindy Gilbert. Nurse Gilbert went to Dr. Neinstein, and the head  
11 of clinic nursing, Tammie Akiyoshi. Dr. Neinstein, who had talked to Dr. Tyndall about his  
12 behavior in the past, referred the complaints to the university's Office of Equity and Diversity,  
13 which investigates sexual misconduct and racial and gender discrimination.

14 20. According to USC, an investigator interviewed seven employees and a patient  
15 (though multiple chaperones who had complained were never informed of the probe or  
16 questioned by the investigator). The investigation concluded there was no violation of school  
17 policy. The only action Dr. Neinstein took as a result of the investigation was barring Dr.  
18 Tyndall from locking the door of his office while with patients.

19 21. Dr. Tyndall's co-workers were becoming increasingly disturbed by his behavior  
20 in the exam room. On top of the conduct they had already reported, chaperones discussed the  
21 way Dr. Tyndall used his fingers during the pelvic exam for many young women. In the final  
22 stage of the exam, gynecologists often assess the uterus for lumps and other abnormalities by  
23 inserting two fingers inside a patient while pressing on her lower abdomen. What troubled  
24 chaperones was Dr. Tyndall's use of his fingers at the start of the exam.

25 22. Before inserting a speculum, the metal duck-billed device that spreads open the  
26 walls of the vagina and enables the physician to view the cervix, Dr. Tyndall would voice  
27 concern that the speculum might not fit. "He would put one finger in and say, 'Oh, I think it will  
28 fit. Let's put two fingers in,'" said a chaperone who worked with Dr. Tyndall for years. As

1 stated, these or substantially similar words were spoken by Dr. Tyndall when he examined Ms.  
2 Vivier.

3 23. Further, also as with Ms. Vivier, four other people familiar with Dr. Tyndall's  
4 exams said that while he spoke, he was moving his fingers in and out of the patients. They said  
5 he made nearly identical statements to hundreds of women as he probed them: "My, what a tight  
6 muscle you have. You must be a runner." The chaperone who worked with Dr. Tyndall for years  
7 said she witnessed at least 70 such exams and remembered thinking the physician would  
8 eventually become embarrassed about repeating the same words to student after student. "He  
9 never was," she said.

10 24. During some exams, Dr. Tyndall made explicit reference to sexual intercourse  
11 while his fingers were inside patients, according to five people who heard the remarks or were  
12 told about them. "He would tell young ladies their hymens are intact. 'Don't worry about it, your  
13 boyfriend's gonna love it,'" a chaperone recalled.

14 25. Dr. Sangeeta Mahajan, a national expert in pelvic pain, said she had never heard  
15 of a gynecologist moving his fingers in and out of a patient to gauge whether a speculum would  
16 fit and called the practice "very odd" and "creepy." Mahajan, the chief of Female Pelvic  
17 Medicine and Reconstructive Surgery at University Hospitals Cleveland Medical Center, said  
18 inserting fingers before the speculum was not "a reliable" way of identifying vaginismus.

19 26. Dr. Louise King, an assistant professor of gynecology at Harvard Medical School,  
20 finds Dr. Tyndall's explanation not standard. Pelvic floor muscles do not typically pose problems  
21 for young women and are not examined unless a patient reports pain there. "It wouldn't be  
22 something a general gynecologist would do by rote," King said.

23 27. At Engemann's first-floor walk-in clinic, at least five women in 2013 and 2014  
24 refused to be scheduled with Dr. Tyndall, despite having gynecological problems that needed  
25 immediate attention. Some said "they felt like he was inappropriately touching them, that it  
26 didn't feel like a normal exam" or "They felt like they were violated."

27 28. Nurse Gilbert recalled one longtime medical assistant at the clinic emerging from  
28 Dr. Tyndall's exam room in tears. "She felt so strongly that it was wrong and that it could easily

1 be any of our daughters.”

2 29. One longtime chaperone said Dr. Tyndall’s behavior was often trained on  
3 international students from Asia. In recent years, some colleagues feared that Dr. Tyndall was  
4 targeting the university’s growing population of Chinese students, who often had a limited  
5 understanding of the English language and American medical norms. Still, Dr. Tyndall was  
6 allowed to continue practicing.

7 30. Throughout 2013 and 2014, USC chaperones gave Nurse Gilbert the names of  
8 women who seemed particularly shaken by Dr. Tyndall’s exams. Nurse Gilbert contacted  
9 patients and explained how to make a written complaint against Dr. Tyndall. Some did, but  
10 others indicated they just wanted to find another gynecologist and forget about the experience.  
11 Nurse Gilbert volunteered to assist Dr. Tyndall to see his exams firsthand and witnessed at least  
12 a dozen pelvic exams she felt were inappropriate. In one case, Dr. Tyndall removed an  
13 intrauterine device from a patient and then asked the young woman if he could keep the used  
14 birth-control device, which was covered in blood and tissue. Multiple experts said they had never  
15 heard of such a request and knew of no medical reason a physician would retain an IUD.

16 31. From 2014 to 2016, Nurse Gilbert repeatedly went to Tammie Akiyoshi, Dr.  
17 Neinstein and other clinic administrators, who seemed uninterested. Dr. Tyndall continued  
18 seeing as many as 16 patients a day.

19 32. In June 2016, Nurse Gilbert went to USC’s rape crisis center, known as  
20 Relationship and Sexual Violence Prevention and Services, and spoke to Executive Director Ekta  
21 Kumar, stating: “We all feel the same. We can’t get anyone to act on it.” Ms. Kumar, a  
22 psychologist, seemed astonished and used the word “abuse” in response to her description of Dr.  
23 Tyndall’s conduct, promising to take the matter higher at USC.

24 33. Also in June 2016, Nurse Gilbert and other staffers stumbled upon a box in a  
25 cabinet in Dr. Tyndall’s office containing images of student-patients’ genitals. The slides and  
26 photographs were shot in the old health clinic in 1990 and 1991 and some were labeled with  
27 identifying patient information. A senior clinic administrator confiscated the box.

28 34. Even so, Dr. Tyndall continued to receive his salary from USC. Then, in a secret



1 deal in the summer of 2017, top USC administrators allowed Dr. Tyndall to resign quietly with a  
2 financial payout. The terms of the deal included the offer that if Dr. Tyndall would agree to  
3 resign, he would be given a severance, and the conclusion of the USC investigation would be  
4 changed to “no finding.”

5 35. Dr. Tyndall’s resignation was effective June 30, 2017. USC did not inform Dr.  
6 Tyndall’s patients. An October communication advised that Dr. Tyndall was “no longer with the  
7 University of Southern California.”

8 36. The Medical Board of California is the agency responsible for protecting the  
9 public from problem physicians. State law requires hospitals and many clinics to notify the  
10 Medical Board in a variety of circumstances where they suspend, discipline or terminate the  
11 privileges of physicians. These reports automatically trigger state investigations into a  
12 physician’s license and hospital leaders face steep fines for failing to report. USC said the law  
13 didn’t apply in Dr. Tyndall’s case because USC itself wasn’t governed by the rules for hospitals  
14 and clinics, the complaints against the gynecologist “were made as a human resources matter,”  
15 and besides, Dr. Tyndall had advised school officials that he was going to retire from practice.

16 37. In fact, Dr. Tyndall renewed his California medical license in January 2018 and  
17 has been quoted as saying that he intends to work well into his eighties.

18 38. On May 22, 2018, two hundred of Defendants’ Faculty Members communicated  
19 via letter their feelings about these incidents to Defendant The Board. The letter states in  
20 pertinent part:

21 “USC kept a physician in a position of power and trust who abused that power and trust  
22 to sexually assault and degrade women students, targeting for abuse the most vulnerable  
23 international and minority students. The University’s conduct is as much at issue in this  
24 case as the physician’s. Numerous students and nursing staff reported Dr. Tyndall’s  
25 misconduct in the years between 2000 and 2014, yet Dr. Tyndall was suspended only in  
26 2016, after one brave staff person reported him to USC’s rape crisis center. After  
27 concluding that the charges against Dr. Tyndall were true, the University allowed him to  
28 resign quietly. By failing to notify the state Medical Board, law enforcement, or patients,

1 the university allowed Dr. Tyndall to keep his medical license, continue preying on  
2 women outside USC, and escape the consequences of his abuse.”

3 39. The Faculty continued:

4 “The University Administration’s actions have been wrong at every turn, and not only in  
5 hindsight. In this case, as in prior cases, faced with an ongoing pattern of serious  
6 wrongdoing by a powerful University official, the University has kept the wrongdoing  
7 quiet, settled financially with the wrongdoer in secret, and denied any responsibility on  
8 the part of the University. There still has been no public report of the investigation into  
9 the two cases involving USC medical deans, nor any visible attempt to determine what  
10 University administrators knew and when they knew it, and why they waited as long as  
11 they did to take action.”

12 40. As such, and as set forth herein, the violations of Defendants USC, The Board,  
13 and Dr. Tyndall, of such statutes as the California Civil Code (hereafter “Civil Code” or “CC”),  
14 the California Education Code (hereafter “Education Code), Title IX (20 U.S.C. §1681), the  
15 California Business and Professions Code (hereafter, “B&PC”), and related common law  
16 principles, include but are not limited to the following:

- 17 a. Violations of the Unruh Act (CC §51);
- 18 b. Sexual harassment (CC §51.9);
- 19 c. Violations of the Bane Act (CC §52.1);
- 20 d. Gender violence (CC §52.4);
- 21 e. Sexual assault;
- 22 f. Sexual battery (CC §1708.5);
- 23 g. Constructive fraud (CC §1573);
- 24 h. Acts of sexual abuse and harassment in the educational setting (Education  
25 Code §220);
- 26 i. Violations of the California Equity in Higher Education Act (Education Code  
27 §66270);
- 28 j. Negligence;

- 1 k. Negligence per se;  
2 l. Negligent hiring, supervision and/or retention;  
3 m. Negligent failure to warn, train, and/or educate;  
4 n. Intentional infliction of emotional distress;  
5 o. Violations of Title IX (20 U.S.C. §1681); and/or  
6 p. Unfair business practices (B&PC §17200).

7 **II.**

8 **JURISDICTION AND VENUE**

9 41. The California Superior Court has jurisdiction in this matter due to Defendants'  
10 aforementioned violations of California statutory law and/or related common law principles.

11 42. The California Superior Court also has jurisdiction in this matter because both the  
12 individual and aggregate monetary damages and restitution sought herein exceed the minimal  
13 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

14 43. The California Superior Court also has jurisdiction in this matter because during  
15 their victimization by Defendants, as set forth herein, Ms. Vivier, Dr. Tyndall, and the members of  
16 the putative Class herein were all California citizens and USC is a California corporation.

17 44. Venue is proper in Los Angeles County pursuant to California Code of Civil  
18 Procedure (hereafter, "CCP") §395(a) and CCP §395.5 in that liability arose there because at least  
19 some of the transactions that are the subject matter of this Complaint occurred therein and/or each  
20 Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

21 **III.**

22 **PARTIES**

23 **PLAINTIFF ELIANA VIVIER ("Ms. Vivier")**

24 45. Ms. Vivier is an individual over the age of eighteen (18) and is now and/or at all  
25 times mentioned in this Complaint was a citizen of the State of California and the United States of  
26 America.

27 46. As described herein, Ms. Vivier seeks recovery herein from Defendants because  
28 with regard to Ms. Vivier, Defendants have committed the following acts:

- 1 a. Violations of the Unruh Act (CC §51);
- 2 b. Sexual harassment (CC §51.9);
- 3 c. Violations of the Bane Act (CC §52.1);
- 4 d. Gender violence (CC §52.4);
- 5 e. Sexual assault;
- 6 f. Sexual battery (CC §1708.5);
- 7 g. Constructive fraud (CC §1573);
- 8 h. Acts of sexual abuse and harassment in the educational setting (Education
- 9 Code §220);
- 10 i. Violations of the California Equity in Higher Education Act (Education Code
- 11 §66270);
- 12 j. Negligence;
- 13 k. Negligence per se;
- 14 l. Negligent hiring, supervision and/or retention;
- 15 m. Negligent failure to warn, train, and/or educate;
- 16 n. Intentional infliction of emotional distress;
- 17 o. Violations of Title IX (20 U.S.C. §1681); and/or
- 18 p. Unfair business practices (B&PC §17200).

19 DEFENDANT, UNIVERSITY OF SOUTHERN CALIFORNIA (“USC”)

20 47. Defendant USC is now and/or at all times mentioned in this Complaint was a  
21 California corporation and the owner and operator of an industry, business and/or facility  
22 licensed to do business and actually doing business in the State of California.

23 DEFENDANT, BOARD OF TRUSTEES OF THE UNIVERSITY OF SOUTHERN  
24 CALIFORNIA (“The Board”)

25 48. Defendant The Board is now and/or at all times mentioned in this Complaint was  
26 an entity, form unknown, and the owner and operator of an industry, business and/or facility  
27 licensed to do business and actually doing business in the State of California.

28 ///

1 DEFENDANT, GEORGE TYNDALL, M.D. ("Dr. Tyndall")

2 49. Defendant Dr. Tyndall is now and/or at all times mentioned in this Complaint was  
3 an individual licensed to do business and actually doing business as a physician in the State of  
4 California.

5 DOES 1 TO 100, INCLUSIVE

6 50. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this  
7 Complaint were licensed to do business and/or actually doing business in the State of California.

8 51. Plaintiffs do not know the true names or capacities, whether individual, partner or  
9 corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such  
10 fictitious names.

11 52. Plaintiffs will seek leave of court to amend this Complaint to allege such names and  
12 capacities as soon as they are ascertained.

13 ALL DEFENDANTS

14 53. Defendants, and each of them, are now and/or at all times mentioned in this  
15 Complaint were in some manner legally responsible for the events, happenings and circumstances  
16 alleged in this Complaint.

17 54. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful  
18 practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

19 55. Defendants, and each of them, are now and/or at all times mentioned in this  
20 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-  
21 versa, and in committing the acts alleged herein, Defendants are now and/or at all times  
22 mentioned in this Complaint were acting within the course and scope of that agency, servitude  
23 and/or employment.

24 56. Defendants, and each of them, are now and/or at all times mentioned in this  
25 Complaint were members of and/or engaged in a joint venture, partnership and common  
26 enterprise, and were acting within the course and scope of, and in pursuance of said joint  
27 venture, partnership and common enterprise.

28 ///

05/13/12

1 57. Defendants, and each of them, at all times mentioned in this Complaint concurred  
2 and contributed to the various acts and omissions of each and every one of the other Defendants  
3 in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

4 58. Defendants, and each of them, at all times mentioned in this Complaint approved  
5 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in  
6 this Complaint.

7 59. Defendants, and each of them, at all times mentioned in this Complaint aided and  
8 abetted the acts and omissions of each and every one of the other Defendants thereby  
9 proximately causing the damages alleged in this Complaint.

10 **IV.**

11 **CLASS ACTION ALLEGATIONS**

12 60. CCP §382 provides in pertinent part: "...[W]hen the question is one of a common  
13 or general interest, of many persons, or when the parties are numerous, and it is impracticable to  
14 bring them all before the court, one or more may sue or defend for the benefit of all." Plaintiffs  
15 bring this suit as a class action pursuant to CCP §382.

16 61. The putative class Plaintiffs will seek to certify is currently composed of and  
17 defined as follows:

18 All California citizens who received a medical examination by Dr. Tyndall while he was  
19 employed by USC and/or while he was under the purview of The Board during the  
20 appropriate time period (hereinafter, the "Class").

21 62. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or  
22 necessary to amend the definition of the Class. Plaintiffs will formally define and designate a  
23 class definition at such time when Plaintiffs seek to certify the Class alleged herein.

24 63. Numerosity (CCP §382):

- 25 a. The potential quantity of members of the Class as defined is so numerous that  
26 joinder of all members is unfeasible and impractical;
- 27 b. The disposition of the claims of the members of the Class through this class  
28 action will benefit both the parties and this Court;

- 1 c. The quantity of members of the Class is unknown to Plaintiffs at this time;  
2 however, it is estimated that the membership of the Class numbers greater  
3 than 100 individuals; and  
4 d. The quantity and identity of such membership is readily ascertainable via  
5 inspection of Defendants' records.

6 64. Superiority (CCP §382): The nature of this action and the nature of the laws  
7 available to Plaintiffs make the use of the class action format particularly efficient and the  
8 appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

- 9 a. California has a public policy which encourages the use of the class action  
10 device;  
11 b. By establishing a technique whereby the claims of many individuals can be  
12 resolved at the same time, the class suit both eliminates the possibility of  
13 repetitious litigation and provides small claimants with a method of obtaining  
14 redress for claims which would otherwise be too small to warrant individual  
15 litigation;  
16 c. This case involves large corporate Defendants and a large number of  
17 individual Class members with many relatively small claims and common  
18 issues of law and fact;  
19 d. If each individual member of the Class was required to file an individual  
20 lawsuit, the large corporate Defendants would necessarily gain an  
21 unconscionable advantage because Defendants would be able to exploit and  
22 overwhelm the limited resources of each individual member of the Class with  
23 Defendants' vastly superior financial and legal resources;  
24 e. Requiring each individual member of the Class to pursue an individual  
25 remedy would also discourage the assertion of lawful claims by the members  
26 of the Class who would be disinclined to pursue an action against Defendants  
27 because of an appreciable and justifiable fear of retaliation and permanent  
28 damage to their lives, careers and well-being;

- 1 f. Proof of a common business practice or factual pattern, of which the members  
2 of the Class experienced, is representative of the Class herein and will  
3 establish the right of each of the members of the Class to recover on the  
4 causes of action alleged herein;
- 5 g. Absent class treatment, the prosecution of separate actions by the individual  
6 members of the Class, even if possible, would likely create:
- 7 i) a substantial risk of each individual plaintiff presenting in separate,  
8 duplicative proceedings the same or essentially similar arguments and  
9 evidence, including expert testimony;
  - 10 ii) a multiplicity of trials conducted at enormous expense to both the  
11 judicial system and the litigants;
  - 12 iii) inconsistent or varying verdicts or adjudications with respect to the  
13 individual members of the Class against Defendants;
  - 14 iv) potentially incompatible standards of conduct for Defendants; and
  - 15 v) potentially incompatible legal determinations with respect to  
16 individual members of the Class which would, as a practical matter, be  
17 dispositive of the interest of the other members of the Class who are  
18 not parties to the adjudications or which would substantially impair or  
19 impede the ability of the members of the Class to protect their  
20 interests.
- 21 h. The claims of the individual members of the Class are not sufficiently large to  
22 warrant vigorous individual prosecution considering all of the concomitant  
23 costs and expenses attendant thereto;
- 24 i. Courts seeking to preserve efficiency and other benefits of class actions  
25 routinely fashion methods to manage any individual questions; and
- 26 j. The Supreme Court of California urges trial courts, which have an obligation  
27 to consider the use of innovative procedural tools to certify a manageable  
28 class, to be procedurally innovative in managing class actions.



1           65.    Well-defined Community of Interest: Plaintiffs also meet the established  
2 standards for class certification (see, e.g. Lockheed Martin Corp. v. Superior Court (2003) 29  
3 Cal.4<sup>th</sup> 1096), as follows:

4           a.    Typicality: The claims of Ms. Vivier are typical of the claims of all members  
5               of the Class she seeks to represent because all members of the Class sustained  
6               injuries and damages arising out of Defendants' common course of conduct in  
7               violation of law and the injuries and damages of all members of the Class  
8               were caused by Defendants' wrongful conduct in violation of law, as alleged  
9               herein.

10          b.    Adequacy: Ms. Vivier:

- 11            i)     is an adequate representative of the Class she seeks to represent;  
12            ii)    will fairly protect the interests of the members of the Class;  
13            iii)   has no interests antagonistic to the members of the Class; and  
14            iv)    will vigorously pursue this suit via attorneys who are competent,  
15               skilled and experienced in litigating matters of this type.

16          c.    Predominant Common Questions of Law or Fact: There are common  
17               questions of law and/or fact as to the members of the Class which  
18               predominate over questions affecting only individual members of the Class,  
19               including, without limitation:

- 20            i)     Whether Defendants violated the Unruh Act (CC §51);  
21            ii)    Whether Defendants committed sexual harassment (CC §51.9);  
22            iii)   Whether Defendants violated the Bane Act (CC §52.1);  
23            iv)    Whether Defendants committed gender violence (CC §52.4);  
24            v)     Whether Defendants committed sexual assault;  
25            vi)    Whether Defendants committed sexual battery (CC §1708.5);  
26            vii)   Whether Defendants committed constructive fraud (CC §1573);  
27            viii)  Whether Defendants committed acts of sexual abuse and harassment in  
28               the educational setting (Education Code §220);

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- ix) Whether Defendants violated the California Equity in Higher Education Act (Education Code §66270);
- x) Whether Defendants committed negligence;
- xi) Whether Defendants committed negligence per se;
- xii) Whether Defendants committed negligent hiring, supervision and/or retention;
- xiii) Whether Defendants committed negligent failure to warn, train, and/or educate;
- xiv) Whether Defendants committed intentional infliction of emotional distress;
- xv) Whether Defendants violated Title IX (20 U.S.C. §1681);
- xvi) Whether Defendants committed unfair business practices (B&PC §17200);
- xvii) Whether the members of the Class are entitled to compensatory damages, and if so, the means of measuring such damages;
- xviii) Whether the members of the Class are entitled to injunctive relief;
- xix) Whether the members of the Class are entitled to restitution; and
- xx) Whether Defendants are liable for attorneys' fees and costs.

66. Whether each member of the Class might be required to ultimately justify an individual claim does not preclude maintenance of a class action (see, e.g. Collins v. Rocha (1972) 7 Cal.3d 232, 238).

V.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**VIOLATION OF UNRUH ACT**

**(CIVIL CODE §51)**

**(Against Defendants USC, The Board, Dr. Tyndall and DOES 1 to 100)**

67. Plaintiffs incorporate by reference and reallege each and every one of the

1 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
2 forth herein.

3 68. Civil Code §51, also known as the “Unruh Civil Rights Act,” states in pertinent  
4 part at subsection (b): “All persons within the jurisdiction of this state are free and equal, and no  
5 matter what their sex, race, color, religion, ancestry, national origin, disability, medical  
6 condition, genetic information, marital status, sexual orientation, citizenship, primary language,  
7 or immigration status are entitled to the full and equal accommodations, advantages, facilities,  
8 privileges, or services in all business establishments of every kind whatsoever.”

9 69. Plaintiffs’ civil rights were violated by Defendant USC, when Defendant USC,  
10 through its agents, actors and employees, intentionally concealed complaints of molestation,  
11 sexual assault, sexual abuse, and/or sexual harassment by Dr. Tyndall from Plaintiffs. Plaintiffs  
12 had a right to be free from gender discrimination, molestation, sexual assault, sexual abuse,  
13 and/or sexual harassment under the Unruh Civil Rights Act.

14 70. Defendants USC, The Board, Dr. Tyndall, and DOES 1 to 100 were acting under  
15 the color of their authority and in the scope of their employment, during the instances when  
16 Plaintiffs were student-patients at Defendant USC and DOES 1 to 100.

17 71. Defendants USC, The Board, and DOES 1 to 100 denied Plaintiffs full and equal  
18 accommodations, advantages, facilities, privileges and healthcare services because of their  
19 gender, by allowing Dr. Tyndall unfettered access to sexually abuse Plaintiffs, by and through  
20 his position of authority as the Student Health Center’s sole full-time gynecologist, by actively  
21 concealing from Plaintiffs its knowledge that Dr. Tyndall was a serial sexual predator.

22 72. By employing and retaining Dr. Tyndall as the sole full-time gynecologist in its  
23 Student Health Clinic, despite its knowledge of myriad reports of Dr. Tyndall’s sexually abusive  
24 nature, Defendant USC forced its female students to seek necessary medical treatment from Dr.  
25 Tyndall, thereby exposing Plaintiffs to Dr. Tyndall’s sexual abuse. Thus, Defendant USC’s  
26 retention of Dr. Tyndall denied Plaintiffs, and all of its other young female students, of full and  
27 equal access to safe medical facilities, treatment and services, based upon their gender.

28 73. The substantial motivating reason for Defendant USC’s conduct of actively

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1 concealing numerous complaints of Dr. Tyndall's sexually abusive nature was Plaintiffs' gender,  
2 as Defendant USC knew that only its female students would seek gynecological treatment from  
3 Dr. Tyndall and, thus, would be unwittingly subjected to his sexual assaults.

4 74. As a direct and proximate result of Defendants' tortuous acts, omissions, wrongful  
5 conduct and breaches of their duties, Plaintiffs' employment and professional development has  
6 been adversely affected. Plaintiffs have lost wages and will continue to lose wages in an amount to  
7 be determined at trial. Plaintiffs have suffered substantial economic injury, all to Plaintiffs'  
8 general, special and consequential damage in an amount to be proven at trial, but in no event less  
9 than the minimum jurisdictional amount of this Court.

10 75. As a further direct and proximate result of Defendants' wrongful actions, as herein  
11 alleged, Plaintiffs have been hurt in their health, strength and activity. Plaintiffs have sustained  
12 permanent and continuing injury to their nervous systems and persons, which has caused and  
13 continues to cause great mental, physical and nervous pain, suffering, fright, upset, grief, worry  
14 and shock in an amount according to proof at trial but in no event less than the jurisdictional  
15 minimum requirements of this Court.

16 **SECOND CAUSE OF ACTION**

17 **SEXUAL HARASSMENT**

18 **(CIVIL CODE §51.9)**

19 **(Against Defendants USC, The Board, and DOES 1 to 100)**

20 76. Plaintiffs incorporate by reference and reallege each and every one of the  
21 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
22 forth herein.

23 77. Civil Code §51.9(a)(1)(A) states in pertinent part: "(a) A person is liable in a  
24 cause of action for sexual harassment under this section when the plaintiff proves all of the  
25 following elements:

26 (1) There is a business, service, or professional relationship between the plaintiff and  
27 defendant. Such a relationship may exist between a plaintiff and a person, including, but not  
28 limited to, any of the following persons:

1 (A) Physician, psychotherapist, or dentist. For purposes of this section,  
2 “psychotherapist” has the same meaning as set forth in paragraph (1) of subdivision (c) of  
3 Section 728 of the Business and Professions Code.”

4 78. Civil Code §51.9(a) continues the elements for sexual harassment:

5 (2) The defendant has made sexual advances, solicitations, sexual requests, demands for  
6 sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a  
7 sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or  
8 severe.

9 (3) There is an inability by the plaintiff to easily terminate the relationship.

10 (4) The plaintiff has suffered or will suffer economic loss or disadvantage or personal  
11 injury, including, but not limited to, emotional distress or the violation of a statutory or  
12 constitutional right, as a result of the conduct described in paragraph (2).”

13 79. During Plaintiffs’ time as students at Defendants USC and DOES 1 to 100, Dr.  
14 Tyndall intentionally, recklessly and wantonly made sexual advances, solicitations, requests,  
15 demands for sexual compliance of a hostile nature based on Plaintiffs’ gender that were  
16 unwelcome, pervasive and severe, including but not limited to Dr. Tyndall groping and fondling  
17 Plaintiffs’ breasts and vaginas, all under the supervision of Defendants, who were acting in the  
18 course and scope of their agency with Defendants, and each of them.

19 80. The incidents of abuse outlined herein above took place while Plaintiffs were under  
20 the control of Dr. Tyndall and Defendants USC, The Board, and DOES 1 to 100, in their capacity  
21 and position as supervisors of physicians, medical professionals, and staff at Defendants USC,  
22 The Board, and DOES 1 to 100, and while acting specifically on behalf of Defendants.

23 81. During Plaintiffs’ time as students at Defendants USC and DOES 1 to 100, Dr.  
24 Tyndall intentionally, recklessly and wantonly did acts which resulted in harmful and offensive  
25 contact with intimate parts of Plaintiffs’ persons, including but not limited to, using his position of  
26 authority and age to force Plaintiffs to give into Dr. Tyndall’s sexual suggestions.

27 82. Because of Plaintiffs’ relationships with Dr. Tyndall and Defendants USC, The  
28 Board, and DOES 1 to 100, Dr. Tyndall’s status as the only full-time gynecologist employed by

05/31/2019  
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1 Defendant USC's Student Health Center, and Plaintiffs' young ages as students of Defendant  
2 USC, Plaintiffs were unable to easily terminate the relationship they had with Defendants.

3 83. Because of Dr. Tyndall's age and position of authority versus Plaintiffs' physical  
4 seclusion, mental and emotional state, and young age, Plaintiffs were unable to, and did not and  
5 could not, give consent to such acts.

6 84. Even though Defendants knew or should have known of these activities by Dr.  
7 Tyndall, Defendants did nothing to investigate, supervise or monitor Dr. Tyndall to ensure the  
8 safety of the student-patients in their charge.

9 85. Because of Plaintiffs' relationships with Defendants, as a student-patients of  
10 Defendants, and Plaintiffs' young age, Plaintiffs were unable to easily terminate the physician-  
11 patient relationship they had with Defendants.

12 86. A corporation is a "person" within meaning of Civil Code §51.9, which subjects  
13 persons to liability for sexual harassment within a business, service or professional relationship,  
14 and such an entity defendant may be held liable under this statute for the acts of its employees.  
15 *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4<sup>th</sup> 1094. Further, principles of ratification  
16 apply when the principal ratifies the agent's originally unauthorized harassment, as is alleged to  
17 have occurred herein.

18 87. Defendants' conduct (and the conduct of their agents) was a breach of their duties  
19 to Plaintiffs.

20 88. As a result of the above-described conduct, Plaintiffs have suffered and continue  
21 to suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
22 emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss  
23 of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to  
24 be prevented from performing daily activities and obtaining the full enjoyment of life; will  
25 sustain loss of earnings and earning capacity, and/or have incurred and will continue to incur  
26 expenses for medical and psychological treatment, therapy, and counseling.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF BANE ACT**

3 **(CIVIL CODE §52.1)**

4 **(Against Defendants USC, The Board, Dr. Tyndall, and DOES 1 to 100)**

5 89. Plaintiffs incorporate by reference and reallege each and every one of the  
6 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
7 forth herein.

8 90. Civil Code §52.1(a) states: "If a person or persons, whether or not acting under  
9 color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat,  
10 intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of  
11 rights secured by the Constitution or laws of the United States, or of the rights secured by the  
12 Constitution or laws of this state, the Attorney General, or any district attorney or city attorney  
13 may bring a civil action for injunctive and other appropriate equitable relief in the name of the  
14 people of the State of California, in order to protect the peaceable exercise or enjoyment of the  
15 right or rights secured. An action brought by the Attorney General, any district attorney, or any  
16 city attorney may also seek a civil penalty of twenty-five thousand dollars (\$25,000). If this civil  
17 penalty is requested, it shall be assessed individually against each person who is determined to  
18 have violated this section and the penalty shall be awarded to each individual whose rights under  
19 this section are determined to have been violated."

20 91. Further, Civil Code §52.1(b) states: "Any individual whose exercise or enjoyment  
21 of rights secured by the Constitution or laws of the United States, or of rights secured by the  
22 Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as  
23 described in subdivision (a), may institute and prosecute in his or her own name and on his or her  
24 own behalf a civil action for damages, including, but not limited to, damages under Section 52,  
25 injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or  
26 enjoyment of the right or rights secured, including appropriate equitable and declaratory relief to  
27 eliminate a pattern or practice of conduct as described in subdivision (a).

28 92. Defendants' actions, as alleged herein, have had and will continue to interfere with

1 Plaintiffs' right to be free from gender discrimination in the form of sexual harassment in the  
2 educational and collegiate athletic setting, codified under 20 U.S.C. §1681. Furthermore, Plaintiffs  
3 had a right to have Defendant USC respond immediately and investigate her molestation, sexual  
4 assault, sexual abuse, and/or sexual harassment by Dr. Tyndall.

5 93. During Plaintiffs' time as students at Defendant USC, Defendants engaged in  
6 oppressive and unlawful tactics in ignoring, concealing, and ultimately suppressing Plaintiffs'  
7 complaints of being sexually abused by Dr. Tyndall. Plaintiffs were threatened, intimidated and  
8 coerced for reporting Dr. Tyndall's sexually abusive conduct, by Dr. Tyndall's own intimidating  
9 and humiliating conduct, as well as the conspiratorial silence and inaction of Defendant USC's  
10 chaperones. These intentional acts of concealment of Dr. Tyndall's abusive behavior violated  
11 Plaintiffs' right to be free from discrimination on the basis of her gender, under Title IX.

12 94. Furthermore, Plaintiffs were deprived of due process of law, when various  
13 complaints to Defendant USC's employees failed to trigger any report, investigation, or other action  
14 by Defendants USC and/or The Board, who were required to do so, both under their own policies  
15 and procedures, as well as under federal mandate by Title IX and the Fourteenth Amendment.

16 95. In addition, these actions were contrary to Plaintiffs' civil rights guaranteed under  
17 the Constitution of the State of California.

18 96. Defendants' wrongful conduct was intended to, and did successfully interfere with  
19 Plaintiffs' constitutional rights to be free from gender discrimination and harassment, as well as  
20 interfered with their rights of due process under the United States Constitution, specifically the  
21 Fifth and Fourteenth Amendments.

22 97. Defendants unlawfully and wrongfully used, or employed others to wrongfully use  
23 threats, intimidation, harassment, violence, and coercion over Plaintiffs' person, to which Plaintiffs  
24 had no relief except to submit to Defendants' wrongful threats, intimidation, harassment, violence,  
25 and coercion, which rendered Plaintiffs' submission involuntary.

26 98. Defendants' above-noted actions were the legal and proximate causes of physical,  
27 psychological, emotional, and economic damages, and damage to Plaintiffs, who has suffered and  
28 continues to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring,



1 and will require them to incur into the future, expenses for medical and psychological treatment,  
2 therapy, and counseling.

3 99. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer  
4 great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress,  
5 embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have  
6 suffered and continues to suffer and was prevented and will continue to be prevented from  
7 performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain  
8 loss of earning capacity; and have incurred and will continue to incur expenses for medical and  
9 psychological treatment, therapy, and counseling. Plaintiffs have also suffered economic, vocational  
10 and employment losses, as well.

11 100. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants  
12 acted willfully and maliciously with the intent to harm Plaintiffs, and in conscious disregard of  
13 Plaintiffs' rights, entitling Plaintiffs to compensatory damages in a sum to be shown according to  
14 proof, emotional distress damages in a sum to be shown according to proof, punitive and/or  
15 exemplary damages, attorney's fees, other damages pursuant to Civil Code §52(b)(1), and a  
16 temporary restraining order or a preliminary or permanent injunction ordering Defendants to  
17 refrain from conduct or activities as alleged herein, stating "VIOLATION OF THIS ORDER IS  
18 A CRIME PUNISHABLE UNDER SECTION 422.77 OF THE PENAL CODE," and other such  
19 relief as the court deems proper.

20 **FOURTH CAUSE OF ACTION**

21 **GENDER VIOLENCE**

22 **(CIVIL CODE 52.4)**

23 **(Against Defendant Dr. Tyndall and DOES 1 to 100)**

24 101. Plaintiffs incorporate by reference and reallege each and every one of the  
25 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
26 forth herein.

27 102. Civil Code §52.4 states: "Any person who has been subjected to gender violence  
28 may bring a civil action for damages against any responsible party. The plaintiff may seek

1 actual damages, compensatory damages, punitive damages, injunctive relief, any combination of  
2 those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees  
3 and costs.”

4 103. Dr. Tyndall’s acts committed against Plaintiffs, as alleged herein, including the  
5 molestation, sexual assault, sexual abuse, and/or sexual harassment of Plaintiffs, constitutes  
6 gender violence and a form of sex discrimination in that one or more of Dr. Tyndall’s acts would  
7 constitute a criminal offense under state law that has as an element the use, attempted use, or  
8 threatened use of physical force against the person of another, committed at least in part based on  
9 the gender of the victim, whether or not those acts have resulted in criminal complaints, charges,  
10 prosecution, or conviction.

11 104. Dr. Tyndall’s acts committed against Plaintiffs, as alleged herein, including the  
12 molestation, sexual assault, sexual abuse, and/or sexual harassment of Plaintiffs constitutes  
13 gender violence and a form of sex discrimination in that Dr. Tyndall’s conduct caused a physical  
14 intrusion or physical invasion of a sexual nature upon Plaintiffs under coercive conditions,  
15 whether or not those acts have resulted in criminal complaints, charges, prosecution, or  
16 conviction.

17 105. As a proximate result of Dr. Tyndall’s acts, Plaintiffs are entitled to actual  
18 damages, compensatory damages, punitive damages, injunctive relief, any combination of those,  
19 or any other appropriate relief. Plaintiffs are also entitled to an award of attorney’s fees and costs  
20 pursuant to Civil Code §52.4, against Dr. Tyndall.

21 **FIFTH CAUSE OF ACTION**

22 **SEXUAL ASSAULT**

23 **(Against Defendant Dr. Tyndall and DOES 1 to 100)**

24 106. Plaintiffs incorporate by reference and reallege each and every one of the  
25 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
26 forth herein.

27 107. Dr. Tyndall, in committing the acts alleged herein, including intending to subject  
28 Plaintiffs to numerous instances of molestation, sexual assault, sexual abuse, and/or sexual

1 harassment during Plaintiffs' time with Defendants USC, The Board, and DOES 1 to 100,  
2 beginning in or around 2005, and lasting for the duration of Plaintiffs' tenure with Defendants, in  
3 or around 2018, including but not limited to instances of Dr. Tyndall groping and fondling  
4 Plaintiffs' vaginas, all while Dr. Tyndall acted in the course and scope of his agency/employment  
5 with Defendants, and each of them and were intended to cause harmful or offensive contact with  
6 Plaintiffs' persons, or intended to put Plaintiffs in imminent apprehension of such contact.

7 108. As set forth herein, Plaintiffs were put in imminent apprehension of a harmful or  
8 offensive contact by Dr. Tyndall and actually believed Dr. Tyndall had the ability to make  
9 harmful or offensive contact with Plaintiffs' person.

10 109. Plaintiffs did not consent to Dr. Tyndall intended harmful or offensive contact  
11 with Plaintiffs' persons, or intent to put Plaintiffs in imminent apprehension of such contact.

12 110. In committing the acts alleged herein, Dr. Tyndall violated Plaintiffs' right,  
13 pursuant to Civil Code §43, of protection from bodily restraint or harm, and from personal insult.  
14 In committing the acts alleged herein, Dr. Tyndall violated his duty, pursuant to Civil Code  
15 §1708, to abstain from injuring the person of Plaintiffs or infringing upon their rights.

16 111. As a result of the above-described conduct, Plaintiffs have suffered and continue  
17 to suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
18 emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss  
19 of enjoyment of life; have suffered and continue to suffer and was prevented and will continue to  
20 be prevented from performing daily activities and obtaining the full enjoyment of life; will  
21 sustain loss of earnings and earning capacity, and/or have incurred and will continue to incur  
22 expenses for medical and psychological treatment, therapy, and counseling.

23 112. Plaintiffs are informed and based thereon alleges that the conduct of Defendants was  
24 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for  
25 the rights and safety of others, and were carried out with a conscious disregard of their right to be  
26 free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to Civil  
27 Code §3294, entitling Plaintiffs to punitive damages against Defendants in an amount appropriate to  
28 punish and set an example of Defendants.

1 **SIXTH CAUSE OF ACTION**

2 **SEXUAL BATTERY**

3 **(Civil Code §1708.5)**

4 **(Against Defendant Dr. Tyndall and DOES 1 to 100)**

5 113. Plaintiffs incorporate by reference and reallege each and every one of the  
6 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
7 forth herein.

8 114. Civil Code §1708.5(a) states: “(a) A person commits a sexual battery who does  
9 any of the following:

10 (1) Acts with the intent to cause a harmful or offensive contact with an intimate part of  
11 another, and a sexually offensive contact with that person directly or indirectly results.

12 (2) Acts with the intent to cause a harmful or offensive contact with another by use of his  
13 or her intimate part, and a sexually offensive contact with that person directly or indirectly  
14 results.

15 (3) Acts to cause an imminent apprehension of the conduct described in paragraph (1) or  
16 (2), and a sexually offensive contact with that person directly or indirectly results.”

17 115. During Plaintiffs’ time as students with Defendants USC and DOES 1 to 100, Dr.  
18 Tyndall intentionally, recklessly and wantonly did acts which were intended to, and did result in  
19 harmful and offensive contact with intimate parts of Plaintiffs’ persons, including but not limited to  
20 being subjected to numerous instances of sexual abuse by Dr. Tyndall, during Plaintiffs’ time with  
21 Defendants USC, The Board, and DOES 1 to 100, beginning in or around 2005, and lasting for the  
22 duration of Plaintiffs’ tenure with Defendants USC, The Board, and DOES 1 to 100, in or around  
23 2015, including but not limited to instances of Dr. Tyndall groping and fondling Plaintiffs’ vaginas,  
24 all while Dr. Tyndall acted in the course and scope of his agency/employment with Defendants, and  
25 each of them.

26 116. Dr. Tyndall did the aforementioned acts with the intent to cause a harmful or  
27 offensive contact with an intimate part of Plaintiffs’ persons, and would offend a reasonable sense  
28 of personal dignity. Further, said acts did cause a harmful or offensive contact with an intimate

1 part of Plaintiffs' persons that would offend a reasonable sense of personal dignity.

2 117. Because of Dr. Tyndall's position of authority over Plaintiffs, and Plaintiffs'  
3 mental and emotional state, and Plaintiffs' young age, Plaintiffs did not give meaningful  
4 consent to such acts.

5 118. As a direct, legal and proximate result of the acts of Dr. Tyndall, Plaintiffs  
6 sustained serious and permanent injuries to their persons, all of his damage in an amount to be  
7 shown according to proof and within the jurisdiction of the Court.

8 119. As a direct result of the sexual abuse by Dr. Tyndall, Plaintiffs have difficulty  
9 in reasonably or meaningfully interacting with others, including those in positions of authority  
10 over Plaintiffs including teachers, and supervisors, and in intimate, confidential and familial  
11 relationships, due to the trauma of the sexual abuse inflicted upon them by Defendants. This  
12 inability to interact creates conflict with Plaintiffs' values of trust and confidence in others,  
13 and has caused Plaintiffs substantial emotional distress, anxiety, nervousness and fear. As a  
14 direct result of the molestation, sexual assault, sexual abuse, and/or sexual harassment by Dr.  
15 Tyndall, Plaintiffs suffered immensely, including, but not limited to, encountering issues with  
16 a lack of trust, various psychological sequelae, depressive symptoms, anxiety, nervousness,  
17 and self-medicating behavior.

18 120. Plaintiffs are informed and based thereon alleges that the conduct of Dr. Tyndall  
19 was oppressive, malicious and despicable in that it was intentional and done in conscious  
20 disregard for the rights and safety of others, and were carried out with a conscious disregard of  
21 her right to be free from such tortious behavior, such as to constitute oppression, fraud or malice  
22 pursuant to Civil Code §3294, entitling Plaintiffs to punitive damages against Dr. Tyndall in an  
23 amount appropriate to punish and set an example of Dr. Tyndall.

24 **SEVENTH CAUSE OF ACTION**

25 **CONSTRUCTIVE FRAUD**

26 **(Against Defendants USC, The Board, Dr. Tyndall and DOES 1 to 100)**

27 121. Plaintiffs incorporate by reference and reallege each and every one of the  
28 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set

1 forth herein.

2 122. By holding Dr. Tyndall out as an agent of Defendants, and by allowing him to  
3 undertake the medical care of young patients such as Plaintiffs, Defendants entered into a  
4 confidential, fiduciary, and special relationship with Plaintiffs.

5 123. By holding themselves out as a preeminent collegiate facility, thereby enticing  
6 Plaintiffs to attend Defendant USC as undergraduate and graduate students, Defendants entered  
7 into a confidential, fiduciary and special relationship with Plaintiffs.

8 124. Defendants breached their confidential, fiduciary duty and special duties to Plaintiffs  
9 by the wrongful and negligent conduct described above and incorporated into this cause of action,  
10 and in so doing, gained an advantage over Plaintiffs in matters relating to Plaintiffs' safety, security  
11 and health. In particular, in breaching such duties as alleged, Defendants were able to sustain their  
12 status as an institution of high moral repute, and preserve their reputation, all at the expense of  
13 Plaintiffs' further injury and in violation of Defendants' mandatory duties.

14 125. By virtue of their confidential, fiduciary and special relationship with Plaintiffs,  
15 Defendants owed Plaintiffs a duty to:

- 16 a. Investigate or otherwise confirm or deny such claims of sexual abuse;
- 17 b. Reveal such facts to Plaintiffs, the community at large, and law enforcement  
18 agencies;
- 19 c. Refuse to place Dr. Tyndall and other molesters in positions of trust and  
20 authority within Defendants' institutions;
- 21 d. Refuse to hold out Dr. Tyndall and other molesters to the public, the  
22 community, parents and law enforcement agencies as being in good standing  
23 and, trustworthy in keeping with him and his position as a physician, faculty  
24 member and authority figure;
- 25 e. Refuse to assign Dr. Tyndall and other molesters to positions of power within  
26 USC and over young students; and
- 27 f. Disclose to Plaintiffs, the public, the school community, and law  
28 enforcement agencies the wrongful, tortious, and sexually exploitive acts that

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Dr. Tyndall had engaged in with patients.

126. Defendants' breach of their respective duties included:

- a. Not performing reasonable investigations of Dr. Tyndall;
- b. Issuing no warnings about Dr. Tyndall;
- c. Permitting Dr. Tyndall to routinely be supervised only by untrained chaperones, who were consistently derelict in their duty to report Dr. Tyndall's sexual abuse to law enforcement;
- d. Not adopting a policy to prevent Dr. Tyndall from routinely having patients and students in his unsupervised control;
- e. Making no reports of any allegations of Dr. Tyndall's abuse of students prior to or during his employment and/or agency at Defendants USC, The Board, and DOES 1 to 100; and
- f. Assigning and continuing to assign Dr. Tyndall to duties which placed him in positions of authority and trust over other student-patients, positions in which Dr. Tyndall could easily isolate and sexually abuse other student-patients.

127. At the time that Defendants engaged in such suppression and concealment of acts, such acts were done for the purpose of causing Plaintiffs to forbear on their rights.

128. Defendants' misconduct did reasonably cause Plaintiffs to forbear on Plaintiffs' rights.

129. The misrepresentations, suppressions and concealment of facts by Defendants were intended to and were likely to mislead Plaintiffs and others to believe that Defendants had no knowledge of any charges against Dr. Tyndall, or that there were no other charges of unlawful or sexual misconduct against Dr. Tyndall or others and that there was no need for them to take further action or precaution.

130. The misrepresentations, suppressions and concealment of facts by Defendants was likely to mislead Plaintiffs and others to believe that Defendants had no knowledge of the fact that Dr. Tyndall was a molester, and was known to commit wrongful sexual acts with student-patients, including Plaintiffs.

1           131. Defendants knew or should have known at the time they suppressed and concealed  
2 the true facts regarding Dr. Tyndall's molestation, sexual assault, sexual abuse, and/or sexual  
3 harassment, that the resulting impressions were misleading.

4           132. Defendants suppressed and concealed the true facts regarding Dr. Tyndall with  
5 the purpose of: preventing Plaintiffs and others, from learning that Dr. Tyndall and others had  
6 been and were continuing to sexually harass, molest and abuse patients, Dr. Tyndall and  
7 Defendants' control, direction, and guidance, with complete impunity; inducing people, including  
8 Plaintiffs and other benefactors and donors to participate and financially support Defendants'  
9 program and other enterprises of Defendants; preventing further reports and outside investigations  
10 into Dr. Tyndall and Defendants' conduct; preventing discovery of Defendants' own conduct;  
11 avoiding damage to the reputations of Defendants; protecting Defendants' power and status in the  
12 community and the gymnastics community; avoiding damage to the reputation of Defendants, or  
13 Defendants' institutions; and avoiding the civil and criminal liability of Defendants, of Dr.  
14 Tyndall, and of others.

15           133. At all times mentioned herein, Defendants, and in particular Defendants USC,  
16 The Board, Dr. Tyndall and DOES 1 to 100, with knowledge of the tortious nature of their own  
17 and Dr. Tyndall's conduct, knowingly conspired and gave each other substantial assistance to  
18 perpetrate the misrepresentations, fraud and deceit alleged herein—covering up the past  
19 allegations of sexual misconduct lodged against Dr. Tyndall, and allowing Dr. Tyndall to remain  
20 in his position as a Student Health Center physician, faculty member and authority figure, so they  
21 could maintain their reputations and continue with their positions within the organization.

22           134. Plaintiffs and others were misled by Defendants' suppressions and concealment of  
23 facts, and in reliance thereon, were induced to act or induced not to act, exactly as intended by  
24 Defendants. Specifically, Plaintiffs were induced to believe that there were no allegations of  
25 criminal or sexual abuse against Dr. Tyndall and that he was safe to be around patients. Had  
26 Plaintiffs, and others, known the true facts about Dr. Tyndall, they would have not participated  
27 further in activities of Defendants, or continued to financially support Defendants' activities. They  
28 would have reported the matters to the proper authorities and to other patients, so as to prevent

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1 future recurrences; they would not have allowed their children, including Plaintiffs, to be alone  
2 with, or have any relationship with Dr. Tyndall; they would not have allowed young female  
3 students, including Plaintiffs, to attend or be under the control of Defendants; they would have  
4 undertaken their own investigations which would have led to discovery of the true facts; and they  
5 would have sought psychological counseling for Plaintiffs, and for other student-patients, who  
6 had been abused by Dr. Tyndall.

7 135. By giving Dr. Tyndall the position of Student Health Center physician, faculty  
8 member and authority figure, Defendants impliedly represented that Dr. Tyndall was safe and  
9 morally fit to give medical care and provide gynecological treatment.

10 136. When Defendants made these affirmative or implied representations and non-  
11 disclosures of material facts, Defendants knew or should have known that the facts were otherwise.  
12 Defendants knowingly and intentionally suppressed the material facts that Dr. Tyndall, had on  
13 numerous, prior occasions sexually, physically, and mentally abused patients of Defendants,  
14 including Plaintiffs, and knew of or learned of conduct, or should have known of conduct by Dr.  
15 Tyndall which placed Defendants on notice that Dr. Tyndall had previously been suspected of  
16 felonies, including unlawful sexual conduct with patients, and was likely sexually abusing student-  
17 patients in his care.

18 137. Because of Plaintiffs' young age, and because of the status of Dr. Tyndall as a  
19 trusted, authority figure to Plaintiffs, Plaintiffs were vulnerable to Dr. Tyndall. Dr. Tyndall  
20 sought Plaintiffs out, and was empowered by and accepted Plaintiffs' vulnerability. Plaintiffs'  
21 vulnerability also prevented Plaintiffs from effectively protecting themselves from the sexual  
22 advances of Dr. Tyndall.

23 138. Defendants had the duty to obtain and disclose information relating to sexual  
24 misconduct of Dr. Tyndall.

25 139. Defendants misrepresented, concealed or failed to disclose information relating to  
26 sexual misconduct of Dr. Tyndall.

27 140. Defendants knew that they had misrepresented, concealed or failed to disclose  
28 information related to sexual misconduct of Dr. Tyndall.

1 141. Plaintiffs justifiably relied upon Defendants for information relating to sexual  
2 misconduct of Dr. Tyndall.

3 142. Defendants USC, The Board, Dr. Tyndall and DOES 1 to 100, in concert with each  
4 other and with the intent to conceal and defraud, conspired and came to a meeting of the minds  
5 whereby they would misrepresent, conceal or fail to disclose information relating to the sexual  
6 misconduct of Dr. Tyndall, the inability of Defendants to supervise or stop Dr. Tyndall from  
7 sexually harassing, molesting and abusing Plaintiffs, and their own failure to properly  
8 investigate, supervise and monitor his conduct with patients.

9 143. By so concealing, Defendants committed at least one act in furtherance of the  
10 conspiracy.

11 144. As a result of the above-described conduct, Plaintiffs have suffered and continue  
12 to suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
13 emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss  
14 of enjoyment of life; have suffered and continues to suffer and were prevented and will continue  
15 to be prevented from performing daily activities and obtaining the full enjoyment of life; will  
16 sustain loss of earnings and earning capacity, and/or have incurred and will continue to incur  
17 expenses for medical and psychological treatment, therapy, and counseling.

18 145. In addition, when Plaintiffs finally discovered the fraud of Defendants, and  
19 continuing thereafter, Plaintiffs experienced recurrences of the above-described injuries. Plaintiffs  
20 experienced extreme and severe mental anguish and emotional distress that Plaintiffs had been the  
21 victim of Defendants' fraud; that Plaintiffs had not been able to help other young female patients to  
22 avoid being molested because of the fraud, and that Plaintiffs had not been able because of the  
23 fraud to receive timely medical treatment needed to deal with the problems Plaintiffs had suffered  
24 and continues to suffer as a result of the molestation, sexual assault, sexual abuse, and/or sexual  
25 harassment.

26 146. In subjecting Plaintiffs to the wrongful treatment herein described, Defendants  
27 USC, The Board, Dr. Tyndall and DOES 1 to 100 acted willfully and maliciously with the intent  
28 to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, so as to constitute malice

1 and/or oppression under Civil Code §3294. Plaintiffs are informed, and on that basis alleges, that  
2 these willful, malicious, and/or oppressive acts, as alleged herein above, were ratified by the  
3 officers, directors, and/or managing agents of Defendants. Plaintiffs are therefore entitled to  
4 recover punitive damages, in an amount to be determined by the court, against Defendants USC,  
5 The Board, Dr. Tyndall and DOES 1 to 100.

6 **EIGHTH CAUSE OF ACTION**

7 **SEXUAL ABUSE AND HARASSMENT IN THE EDUCATIONAL SETTING**

8 **(Education Code §220)**

9 **(Against Defendants USC, The Board, Dr. Tyndall and DOES 1 to 100)**

10 147. Plaintiffs incorporate by reference and reallege each and every one of the  
11 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
12 forth herein.

13 148. Education Code §220 states: "No person shall be subjected to discrimination on  
14 the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity,  
15 religion, sexual orientation, or any other characteristic that is contained in the definition of hate  
16 crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any  
17 program or activity conducted by an educational institution that receives, or benefits from, state  
18 financial assistance, or enrolls pupils who receive state student financial aid."

19 149. Plaintiffs were harmed by being subjected to molestation, sexual assault, sexual  
20 abuse, and/or sexual harassment at Defendants USC, The Board, and DOES 1 to 100 because of  
21 Plaintiffs' gender and Defendants are responsible for that harm.

22 150. Plaintiffs suffered harassment that was so severe, pervasive, and offensive that it  
23 effectively deprived Plaintiffs of the right of equal access to educational benefits and opportunities.

24 151. Defendants had actual knowledge that this molestation, sexual assault, sexual  
25 abuse, and/or sexual harassment was occurring. Specifically, Defendant USC, by and through its  
26 employees, witnessed Dr. Tyndall's abuse firsthand, as it was witnessed by multiple USC-  
27 employed chaperones. Further, Defendant USC received, and then actively suppressed and ignored,  
28 numerous complaints of Dr. Tyndall's sexual abuse, dating back to at least the year 2000.

1 152. In the face of this knowledge of molestation, sexual assault, sexual abuse, and/or  
2 sexual harassment that was being perpetrated upon Plaintiffs, by Dr. Tyndall, Defendants acted with  
3 deliberate indifference towards responding to these alarms and preventing further abuse. Defendants  
4 allowed Dr. Tyndall to remain as a Student Health Center physician at Defendants USC, The  
5 Board, and DOES 1 to 100, to sexually harass, abuse and molest other patients. It was not until  
6 June of 2017 that Defendants allowed Dr. Tyndall to resign, with a monetary settlement, that Dr.  
7 Tyndall's sexual abuse of young female students of Defendant USC finally stopped.

8 153. As a result of the aforementioned conduct, Plaintiffs suffered and continue to suffer  
9 great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress,  
10 embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have  
11 suffered and continues to suffer and were prevented and will continue to be prevented from  
12 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and  
13 earning capacity, and have incurred and will continue to incur expenses for medical and  
14 psychological treatment, therapy, and counseling.

15 154. In subjecting Plaintiffs to the wrongful treatment herein described, Defendants  
16 USC, The Board, Dr. Tyndall and DOES 1 to 100, acted willfully and maliciously with the intent  
17 to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, so as to constitute malice and  
18 oppression under Civil Code §3294. Plaintiffs are therefore entitled to the recovery of punitive  
19 damages, in an amount to be determined by the court, against USC, The Board, Dr. Tyndall and  
20 DOES 1 to 100, in a sum to be shown according to proof.

21 **NINTH CAUSE OF ACTION**

22 **VIOLATION OF THE CALIFORNIA EQUITY IN HIGHER EDUCATION ACT**

23 **[Education Code §66270]**

24 **(Against Defendants USC, The Board, and DOES 1 to 100)**

25 155. Plaintiffs incorporate by reference and reallege each and every one of the  
26 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
27 forth herein.

28 156. The California Sex Equity in Education Act §66281.5 provides in pertinent part:

1 “(a) It is the policy of the State of California, pursuant to Section 66251, that all persons,  
2 regardless of their sex, should enjoy freedom from discrimination of any kind in the  
3 postsecondary educational institution of the state. The purpose of this section is to provide  
4 notification of the prohibition against sexual harassment as a form of sexual discrimination and  
5 to provide notification of available remedies.”

6 157. The conduct of Defendants USC, The Board, and DOES 1 to 100 as alleged  
7 herein constitutes sexual harassment as a form of sexual discrimination against Plaintiffs and the  
8 members of the Class, and violated the Equity in Higher Education Act. Plaintiffs are entitled to  
9 enforce the Act through a civil action pursuant to Education Code §66292.4.

10 158. As a result of Defendants’ conduct, Plaintiffs and the members of the Class have  
11 been damaged in an amount to be proven at trial.

12 **TENTH CAUSE OF ACTION**

13 **NEGLIGENCE**

14 **(Against Defendants USC, The Board, and DOES 1 to 100)**

15 159. Plaintiffs incorporate by reference and reallege each and every one of the  
16 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
17 forth herein.

18 160. Prior to and after the first incident of Dr. Tyndall’s molestation, sexual assault,  
19 sexual abuse, and/or sexual harassment of Plaintiffs, through the present, Defendants, knew  
20 and/or should have known that Dr. Tyndall had and was capable of sexually, physically, and  
21 mentally abusing and harassing Plaintiffs or other victims.

22 161. Defendants and each of them had special duties to protect Plaintiffs and the young  
23 patients, when such individuals were entrusted to Defendants’ care. Plaintiffs’ care, welfare and  
24 physical custody was entrusted to Defendants. Defendants voluntarily accepted the entrusted care of  
25 Plaintiffs. As such, Defendants owed Plaintiffs, Defendants’ student-patients, a special duty of care  
26 that adults and medical professionals dealing with vulnerable medical patients and young students  
27 owe to protect them from harm. The duty to protect and warn arose from the special, trusting,  
28 confidential, and fiduciary relationship between Defendants and Plaintiffs.

1           162. Defendants breached their duties of care to Plaintiffs by allowing Dr. Tyndall to  
2 come into contact with Plaintiffs and other student-patients without effective supervision; by  
3 failing to adequately hire, supervise and retain Dr. Tyndall whom they permitted and enabled to  
4 have access to Plaintiffs; by concealing from Plaintiffs, the public and law enforcement that Dr.  
5 Tyndall was sexually harassing, molesting and abusing patients,; and by holding Dr. Tyndall out to  
6 Plaintiffs as being of high moral and ethical repute, in good standing and trustworthy.

7           163. Defendants breached their duties to Plaintiffs by failing to investigate or  
8 otherwise confirm or deny such facts of sexual abuse by Dr. Tyndall, failing to reveal such facts  
9 to Plaintiffs, the community and law enforcement agencies, and by placing Dr. Tyndall into a  
10 position of trust and authority, holding him out to Plaintiffs and the public as being in good  
11 standing and trustworthy.

12           164. Defendants breached their duty to Plaintiffs by failing to adequately monitor and  
13 supervise Dr. Tyndall and failing to prevent Dr. Tyndall from committing wrongful sexual acts  
14 with medical patients, including Plaintiffs. Defendants' voluminous past records of sexual  
15 misconduct by Dr. Tyndall caused Defendants to know, or gave them information where they  
16 should have known, of Dr. Tyndall's incapacity to serve as a physician, faculty member, and  
17 authority figure at Defendants' institution, providing for the physical care of young females.

18           165. As a result of the above-described conduct, Plaintiffs have suffered and continue  
19 to suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
20 emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss  
21 of enjoyment of life; have suffered and continue to suffer and were prevented and will continue  
22 to be prevented from performing daily activities and obtaining the full enjoyment of life; will  
23 sustain loss of earnings and earning capacity, and have incurred and will continue to incur  
24 expenses for medical and psychological treatment, therapy, and counseling.

25                                           **ELEVENTH CAUSE OF ACTION**

26                                           **NEGLIGENCE PER SE**

27                                   **(Against Defendants USC, The Board, and DOES 1 to 100)**

28           166. Plaintiffs incorporate by reference and reallege each and every one of the

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1 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
2 forth herein.

3 167. Under applicable law, Defendants, by and through their employees and agents,  
4 were medical care providers and were under a statutory duty to report known or suspected  
5 incidents of molestation, sexual assault, sexual abuse, and/or sexual harassment of student-  
6 patients or any individuals in their care to the appropriate authorities, and not to impede the filing  
7 of any such report.

8 168. Defendants knew or should have known that their gynecological physician, Dr.  
9 Tyndall, had sexually molested, abused or caused touching, battery, harm, and/or other injuries  
10 to female students including Plaintiffs, giving rise to a duty to report such conduct.

11 169. Defendants knew, or should have known, in the exercise of reasonable diligence,  
12 that an undue risk to patients, including Plaintiffs, existed because Defendants did not comply  
13 with mandatory reporting requirements.

14 170. By failing to report the continuing molestation, sexual assault, sexual abuse,  
15 and/or sexual harassment by Dr. Tyndall, which Defendants knew or should have known about,  
16 and by ignoring the fulfillment of the mandated compliance with the reporting requirements,  
17 Defendants created the risk and danger contemplated by the applicable mandated reporting laws,  
18 and as a result, unreasonably and wrongfully exposed Plaintiffs and other patients to molestation,  
19 sexual assault, sexual abuse, and/or sexual harassment.

20 171. Plaintiffs are members of the class of persons for whose protection applicable  
21 mandated reporting laws were specifically adopted to protect.

22 172. Had Defendants adequately reported the molestation, sexual assault, sexual abuse,  
23 and/or sexual harassment of Plaintiffs and other patients, as required by applicable mandated  
24 reporting laws, further harm to Plaintiffs and other individuals would have been avoided.

25 173. As a proximate result of Defendants' failure to follow the mandatory reporting  
26 requirements, Defendants wrongfully denied Plaintiffs and other minors the intervention of law  
27 enforcement and the appropriate authorities. Such public agencies would have changed the then-  
28 existing arrangements and conditions that provided the access and opportunities for the

1 molestation of Plaintiffs by Dr. Tyndall.

2 174. The physical, mental, and emotional damages and injuries resulting from the  
3 molestation, sexual assault, sexual abuse, and/or sexual harassment of Plaintiffs by Dr. Tyndall,  
4 were the type of occurrence and injuries that the applicable mandated reporting laws were  
5 designed to prevent.

6 175. As a result, Defendants' failure to comply with the mandatory reporting  
7 requirements constituted a per se breach of Defendants' duties to Plaintiffs.

8 176. Defendants, and each of them, breached their duty to Plaintiffs by, *inter alia*, by  
9 failing to adequately monitor and supervise Dr. Tyndall and stop Dr. Tyndall from committing  
10 wrongful sexual acts with patients, including Plaintiffs.

11 177. As a result of the above-described conduct, Plaintiffs have suffered and continue to  
12 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional  
13 distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss of  
14 enjoyment of life; have suffered and continue to suffer and was prevented and will continue to be  
15 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain  
16 loss of earnings and earning capacity, and/or have incurred and will continue to incur expenses  
17 for medical and psychological treatment, therapy, and counseling.

18 **TWELFTH CAUSE OF ACTION**

19 **NEGLIGENT HIRING, SUPERVISION, AND/OR RETENTION**

20 **(Against Defendants USC, The Board, and DOES 1 to 100)**

21 178. Plaintiffs incorporate by reference and reallege each and every one of the  
22 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
23 forth herein.

24 179. By virtue of Plaintiffs' special relationships with Defendants, and Defendants'  
25 relationship to Dr. Tyndall, Defendants owed Plaintiffs a duty to provide reasonable supervision  
26 of Dr. Tyndall, to use reasonable care in investigating Dr. Tyndall's background, and to provide  
27 adequate warning to Plaintiffs of Dr. Tyndall dangerous propensities and unfitness. As  
28 organizations and individuals responsible for, and entrusted with, the welfare of patients,

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1 Defendants USC, The Board, and DOES 1 to 100 had a duty to protect, supervise, and monitor  
2 Plaintiffs from being preyed upon by sexual predators, and to supervise and monitor Dr. Tyndall  
3 such that he would not be placed in seclusion with vulnerable medical patients, including  
4 Plaintiffs.

5 180. Further, by virtue of Plaintiffs' special relationship with Defendants, and  
6 Defendants' relationship to Dr. Tyndall, Defendants owed Plaintiffs a duty to not hire or retain,  
7 given his dangerous and exploitive propensities, which Defendants knew or should have known  
8 about had they engaged in a reasonable, meaningful and adequate investigation of her  
9 background prior to his hiring or retaining her in subsequent positions of employment.

10 181. As representatives of Defendants USC, The Board, and DOES 1 to 100, where  
11 many of the patients thereof are vulnerable young women entrusted to these Defendants, these  
12 Defendants' agents expressly and implicitly represented that the Student Health Center physicians  
13 and healthcare professionals, faculty members and staff, including Dr. Tyndall, were not a sexual  
14 threat to student-patients and all other individuals who would fall under Dr. Tyndall's influence,  
15 control, direction, guidance, and care.

16 182. Defendants, by and through their respective agents, servants and employees, knew  
17 or should have known of Dr. Tyndall's dangerous and exploitive propensities and that Dr.  
18 Tyndall was an unfit agent.

19 183. Despite such knowledge, Defendants negligently failed to supervise Dr. Tyndall in  
20 his position of trust and authority as a Student Health Center physician, faculty member, and  
21 authority figure over patients and young women, where he was able to commit wrongful acts of  
22 sexual misconduct against Plaintiffs.

23 184. Defendants failed to provide reasonable supervision of Dr. Tyndall, failed to use  
24 reasonable care in investigating Dr. Tyndall, and failed to provide adequate warning to Plaintiffs  
25 of Dr. Tyndall's dangerous propensities and unfitness. Defendants further failed to take  
26 reasonable steps to ensure the safety of patients, including Plaintiffs, from molestation, sexual  
27 assault, sexual abuse, and/or sexual harassment.

28 185. At no time during the time periods alleged herein did Defendants have in place a

1 reasonable system or procedure to investigate, supervise and/or monitor its Student Health Center  
2 physicians and healthcare professionals, faculty members and staff, including Dr. Tyndall, to  
3 prevent molestation, sexual assault, sexual abuse, and/or sexual harassment of student-patients  
4 and/or others, nor did they implement a system or procedure to oversee or monitor conduct  
5 toward student-patients and/or others in Defendants' care.

6 186. Defendants were aware or should have been aware of how vulnerable student-  
7 patients were to molestation, sexual assault, sexual abuse, and/or sexual harassment by  
8 physicians, faculty members and/or other persons of authority within the control of Defendants  
9 prior to Plaintiffs' sexual abuse by Dr. Tyndall.

10 187. Defendants were put on notice, knew and/or should have known that Dr. Tyndall  
11 had previously engaged and continued to engage in unlawful sexual conduct with student-  
12 patients, and had previously and was continuing to commit other felonies, for his own personal  
13 sexual gratification, and that it was, or should have been foreseeable that Dr. Tyndall was  
14 engaging, or would engage in illicit sexual activities with Plaintiffs, and others, under the cloak  
15 of his authority, confidence, and trust, bestowed upon him through Defendants.

16 188. Defendants were placed on actual or constructive notice that Dr. Tyndall had  
17 molested and/or was molesting student-patients during his employment with Defendants.  
18 Defendants were informed of molestation, sexual assault, sexual abuse, and/or sexual harassment  
19 of patients committed by Dr. Tyndall prior to Plaintiffs' sexual abuse, and of conduct by Dr.  
20 Tyndall that would put a reasonable person on notice of such propensity to molest and abuse  
21 young female students. Defendants also had knowledge of inappropriate conduct and  
22 molestation, sexual assault, sexual abuse, and/or sexual harassment committed by Dr. Tyndall  
23 during his employment, yet chose to allow him to remain unsupervised where he could sexually  
24 abuse Plaintiffs.

25 189. Even though Defendants knew or should have known of these sexually illicit  
26 activities by Dr. Tyndall, Defendants failed to use reasonable care in investigating Dr. Tyndall,  
27 and did nothing to reasonably investigate, supervise and/or monitor Dr. Tyndall to ensure the  
28 safety of his patients.

1 190. Defendants' conduct was a breach of their duties to Plaintiffs.

2 191. Defendants, and each of them, breached their duty to Plaintiffs by, *inter alia*,  
3 failing to adequately monitor and supervise Dr. Tyndall and stop Dr. Tyndall from committing  
4 wrongful sexual acts with student-patients, including Plaintiffs.

5 192. As a result of the above-described conduct, Plaintiffs have suffered and continue  
6 to suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
7 emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss  
8 of enjoyment of life; have suffered and continue to suffer and were prevented and will continue  
9 to be prevented from performing daily activities and obtaining the full enjoyment of life; will  
10 sustain loss of earnings and earning capacity, and/or have incurred and will continue to incur  
11 expenses for medical and psychological treatment, therapy, and counseling.

12 **THIRTEENTH CAUSE OF ACTION**

13 **NEGLIGENT FAILURE TO WARN, TRAIN, AND/OR EDUCATE**

14 **(Against Defendants USC, The Board, and DOES 1 to 100)**

15 193. Plaintiffs incorporate by reference and reallege each and every one of the  
16 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
17 forth herein.

18 194. Defendants owed Plaintiffs a duty to take reasonable protective measures to  
19 protect Plaintiffs and other student-patients from the risk of molestation, sexual assault, sexual  
20 abuse, and/or sexual harassment by Dr. Tyndall by properly warning, training, and/or educating  
21 Plaintiffs about how to avoid such a risk.

22 195. Defendants breached their duty to take reasonable protective measures to protect  
23 Plaintiffs and other patients from the risk of molestation, sexual assault, sexual abuse, and/or  
24 sexual harassment by Dr. Tyndall, such as the failure to properly warn, train, and/or educate  
25 Plaintiffs and other patients about how to avoid such a particular risk that Dr. Tyndall posed—of  
26 sexual misconduct.

27 196. Defendants breached their duty to take reasonable protective measures to protect  
28 Plaintiffs and other patients from the risk of molestation, sexual assault, sexual abuse, and/or

1 sexual harassment by Dr. Tyndall, by failing to supervise and stop employees of Defendants,  
2 including Dr. Tyndall, from committing wrongful sexual acts with student-patients, including  
3 Plaintiffs.

4 197. As a result of the above-described conduct, Plaintiffs has suffered and continue to  
5 suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
6 emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss  
7 of enjoyment of life; have suffered and continues to suffer and were prevented and will continue  
8 to be prevented from performing daily activities and obtaining the full enjoyment of life; will  
9 sustain loss of earnings and earning capacity, and/or have incurred and will continue to incur  
10 expenses for medical and psychological treatment, therapy, and counseling.

11 **FOURTEENTH CAUSE OF ACTION**

12 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

13 **(Against Defendants USC, The Board, Dr. Tyndall and DOES 1 to 100)**

14 198. Plaintiffs incorporate by reference and reallege each and every one of the  
15 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
16 forth herein.

17 199. The conduct of Defendants USC, The Board, Dr. Tyndall and DOES 1 to 100  
18 toward Plaintiffs, as described herein, was outrageous and extreme.

19 200. A reasonable person would not expect or tolerate the molestation, sexual assault,  
20 sexual abuse, and/or sexual harassment of Plaintiffs by Dr. Tyndall, and Defendants' knowledge  
21 and callous indifference thereof. Plaintiffs had great trust, faith and confidence in Defendants,  
22 which, by virtue of Dr. Tyndall and Defendants' wrongful conduct, turned to fear.

23 201. A reasonable person would not expect or tolerate Defendants putting Dr. Tyndall  
24 who was known to Defendants to have physically and sexually abused other student-patients, in a  
25 position of care of Plaintiffs and other patients, which enabled Dr. Tyndall to have access to other  
26 patients so that he could commit wrongful sexual acts, including the conduct described herein,  
27 with young female students, including Plaintiffs. Plaintiffs had great trust, faith and confidence  
28 in Defendants, which, by virtue of Defendants' wrongful conduct, turned to fear.

1 202. A reasonable person would not expect or tolerate Defendants and their agents to be  
2 incapable of supervising and/or stopping participants and members of Defendants, including Dr.  
3 Tyndall, from committing wrongful sexual acts with other patients, including Plaintiffs, or to  
4 supervise Dr. Tyndall. Plaintiffs had great trust, faith and confidence in Defendants, which, by  
5 virtue of Defendants' wrongful conduct, turned to fear.

6 203. Defendants' conduct described herein was intentional and malicious and done for  
7 the purpose of causing or with the substantial certainty that Plaintiffs would suffer humiliation,  
8 mental anguish, and emotional and physical distress.

9 204. As a result of the above-described conduct, Plaintiffs have suffered and continues to  
10 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional  
11 distress including embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment  
12 of life; have suffered and continue to suffer and was prevented and will continue to be prevented  
13 from performing daily activities and obtaining the full enjoyment of life; will sustain loss of  
14 earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical  
15 and psychological treatment, therapy, and counseling.

16 205. In subjecting Plaintiffs to the wrongful treatment herein described, Defendants  
17 USC, The Board, Dr. Tyndall and DOES 1 to 100 acted willfully and maliciously with the intent  
18 to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, so as to constitute malice  
19 and/or oppression under Civil Code §3294. Plaintiffs are informed, and on that basis alleges, that  
20 these willful, malicious, and/or oppressive acts, as alleged herein above, were ratified by the  
21 officers, directors, and/or managing agents of Defendants. Plaintiffs are therefore entitled to  
22 recover punitive damages, in an amount to be determined by the court, against Defendants USC,  
23 The Board, Dr. Tyndall and DOES 1 to 100.

24 **FIFTEENTH CAUSE OF ACTION**

25 **VIOLATION OF TITLE IX**

26 **(20 U.S.C. §§1681(a), et seq.)**

27 **(Against Defendants USC, The Board, and DOES 1 to 100)**

28 206. Plaintiffs incorporate by reference and reallege each and every one of the

1 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
2 forth herein.

3 207. Title IX of the Education Amendments Act of 1972 states "No person in the  
4 United States shall on the basis of sex, be ... subject to discrimination under any education  
5 program or activity receiving Federal financial assistance ..." 20 U.S.C. §1681, et seq.

6 208. Plaintiffs are "persons" under Title IX.

7 209. Though a private institution, Defendant USC receives federal financial assistance for  
8 its various education programs, and is therefore subject to the provisions of Title IX, 20 U.S.C.  
9 §§1681(a), et seq.

10 210. As young students and medical patients at Defendants' institution, Plaintiffs were  
11 subjected to molestation, sexual assault, sexual abuse, and/or sexual harassment by Dr. Tyndall.

12 211. Defendants USC and The Board are required under Title IX to investigate  
13 allegations of molestation, sexual assault, sexual abuse, and/or sexual harassment.

14 212. Defendant USC, with authority to institute corrective measures, had actual notice  
15 that Dr. Tyndall posed a substantial risk of molestation, sexual assault, sexual abuse, and/or  
16 sexual harassment to the young female student-patients who sought treatment through Defendant  
17 USC's Student Health Clinic. Specifically, Defendant USC received numerous complaints of Dr.  
18 Tyndall's sexual abuse, yet allowed such sexual abuse to continue unabated.

19 213. Defendants USC, The Board, and DOES 1 to 100 were deliberately indifferent to  
20 the substantial risk of molestation, sexual assault, sexual abuse, and/or sexual harassment posed to  
21 student-patients who came into contact with Dr. Tyndall at Defendants USC, The Board, and  
22 DOES 1 to 100. After receiving actual notice of Plaintiffs' complaints of being sexually abused by  
23 Dr. Tyndall, Defendants USC, The Board, and DOES 1 to 100, through their employees, agents,  
24 and servants, ignored the sexual abuse that Dr. Tyndall inflicted on Plaintiffs and allowed him to  
25 continue treating young female students. It was this conduct that constitutes willful indifference  
26 towards Plaintiffs and other similarly situated student-patients who would be subjected to Dr.  
27 Tyndall's unfettered sexual misconduct.

28 214. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer

1 great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress,  
2 embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered  
3 and continue to suffer and were prevented and will continue to be prevented from performing daily  
4 activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity,  
5 and have incurred and will continue to incur expenses for medical and psychological treatment,  
6 therapy, and counseling.

7 215. In subjecting Plaintiffs to the wrongful treatment herein described, Defendants USC,  
8 The Board, Dr. Tyndall, and DOES 1 to 100, acted willfully and maliciously with the intent to harm  
9 Plaintiffs, and in conscious disregard of Plaintiffs' rights, so as to constitute malice and oppression  
10 under Civil Code §3294. Plaintiffs are therefore entitled to the recovery of punitive damages, in an  
11 amount to be determined by the court, against Defendants USC, The Board, Dr. Tyndall, and  
12 DOES 1 to 100, in a sum to be shown according to proof. Furthermore, Plaintiffs request the award  
13 of attorneys' fees pursuant to 42 U.S.C. §1988.

14 **SIXTEENTH CAUSE OF ACTION**

15 **UNFAIR BUSINESS PRACTICES**

16 **(B&PC §17200)**

17 **(Against Defendants USC, The Board, Dr. Tyndall and DOES 1 to 100)**

18 216. Plaintiffs incorporate by reference and reallege each and every one of the  
19 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
20 forth herein.

21 217. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and  
22 include any unlawful, unfair or fraudulent business act..."

23 218. B&PC §17205 provides that unless otherwise expressly provided, the remedies or  
24 penalties provided for unfair competition "are cumulative to each other and to the remedies or  
25 penalties available under all other laws of this state."

26 219. B&PC §17204 provides that an action for any relief from unfair competition may  
27 be prosecuted by any person who has suffered injury in fact and has lost money or property as a  
28 result of such unfair competition.

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1           220. Dr. Tyndall and Defendants USC, The Board, and DOES 1 to 100 have engaged  
2 in unlawful, unfair and deceptive business practices including allowing Dr. Tyndall to engage in  
3 repeated harassment of student-patients, including Plaintiffs, and failing to take all reasonable  
4 steps to prevent harassment and abuse from occurring. The unlawful, unfair and deceptive  
5 business practices also included failing to adequately investigate, vet, and evaluate individuals  
6 for employment with Defendants USC, The Board, and DOES 1 to 100, refusing to design,  
7 implement, and oversee policies regarding sexual harassment and abuse of student-patients in a  
8 reasonable manner that is customary in similar educational environments.

9           221. Dr. Tyndall and Defendants USC, The Board, and DOES 1 to 100, have engaged  
10 in unlawful, unfair and deceptive business practices including concealing molestation, sexual  
11 assault, sexual abuse, and/or sexual harassment claims by student-patients, such as Plaintiffs, so  
12 as to retain other similarly situated individuals within Defendants USC, The Board, and DOES 1  
13 to 100 who were not apprised of such illicit sexual misconduct by Dr. Tyndall.

14           222. Defendants engaged in a common scheme, arrangement or plan to actively  
15 conceal allegations against sexual abusers who were employees, agents, members, and/or  
16 participants at Defendant USC, including Dr. Tyndall, such that Defendants USC, The Board,  
17 and DOES 1 to 100 could maintain their public image, and avoid detection of such abuse and  
18 abusers. Plaintiffs are informed and believe and thereon allege that Defendants actively  
19 concealed these allegations, such that Defendants would be insulated from public scrutiny,  
20 governmental oversight, and/or investigation from various law enforcement agencies, all done in  
21 order to maintain the false sense of safety for participants and their families and to perpetuate the  
22 program financially.

23           223. By engaging in unlawful, unfair and deceptive business practices, Defendants  
24 USC, The Board, Dr. Tyndall and DOES 1 to 100 benefitted financially to the detriment of its  
25 competitors, who had to comply with the law.

26           224. Unless restrained, Defendants USC, The Board, Dr. Tyndall and DOES 1 to 100  
27 will continue to engage in the unfair acts and business practices described above, resulting in  
28 great and irreparable harm to Plaintiffs and/or other similarly situated participants and members.



1 225. Plaintiffs seek restitution for all amounts improperly obtained by Defendants USC,  
2 The Board, Dr. Tyndall and DOES 1 to 100 through the use of the above-mentioned unlawful  
3 business practices, as well as the disgorgement of all ill-gotten gains and restitution on behalf of  
4 Plaintiffs and all other similarly situated student-patients who were also subjected to Defendants'  
5 illegal and unfair business practices.

6 226. Pursuant to B&PC §17203 and available equitable powers, Plaintiffs are entitled  
7 to a preliminary and permanent injunction, enjoining Defendants USC, The Board, Dr. Tyndall  
8 and DOES 1 to 100 from continuing the unlawful and unfair business practices described above.

9 227. Further, Plaintiffs seek the appointment of a court monitor to enforce its orders  
10 regarding client safety.

11 228. In addition, Plaintiffs are entitled to recover reasonable attorneys' fees pursuant to  
12 the B&PC and CCP §1021.5.

13 VI.

14 PRAYER FOR RELIEF

15 WHEREFORE, Plaintiffs pray:

16 a. That the Court issue an Order certifying the Class herein, appointing all named  
17 Plaintiffs as representative of all others similarly situated, and appointing all law firms  
18 representing all named Plaintiffs as counsel for the members of the Class;

19 b. For past, present and future special damages, including but not limited to past,  
20 present and future lost earnings, economic damages and others, as allowed by law in an amount  
21 to be determined at trial;

22 c. For past, present and future non-economic damages, as allowed by law in an  
23 amount to be determined at trial;

24 d. For any appropriate statutory damages, as allowed by law in an amount to be  
25 determined at trial;

26 e. For costs of suit, as allowed by law in an amount to be determined at trial;

27 f. For punitive damages, according to proof, though not as to the Negligence Causes  
28 of Action (Causes of Action 10 through 13), as allowed by law in an amount to be determined at

LAW OFFICES OF  
KEVIN T. BARNES  
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05/31/2018

1 trial;

2 g. For interest on damages, as well as pre-judgment and post-judgment interest, as  
3 allowed by law in an amount to be determined at trial;

4 h. For attorney's fees, as allowed by law in an amount to be determined at trial;

5 i. For declaratory and injunctive relief, including but not limited to Court oversight  
6 of Defendants, as allowed by law; and

7 j. For any other such relief as this Court may deem just and proper.


8 **VII.**

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

11 Dated: May 30, 2018

LAW OFFICES OF KEVIN T. BARNES  
TOJARIEH LAW FIRM, PC

12  
13 By: 

14 Kevin T. Barnes, Esq.  
15 Gregg Lander, Esq.  
16 Joseph Tojarieh, Esq.  
17 Attorneys for Plaintiffs  
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05/31/2018

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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Law Offices of Kevin T. Barnes
1635 Pontius Avenue, Second Floor
Los Angeles, California 90025-3361
TELEPHONE NO.: (323) 549-9100 FAX NO.: (323) 549-0101
ATTORNEY FOR (Name): Eliana Vivier

FOR COURT USE ONLY
FILED
Superior Court of California
County of Los Angeles
MAY 30 2018
Sherri R. Carter, EXECUTIVE Officer/Clerk
By Rita Nazaryan, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 N. Hill Street
MAILING ADDRESS: 111 N. Hill Street
CITY AND ZIP CODE: Los Angeles, California 90012-3014
BRANCH NAME: Stanley Mosk Courthouse

CASE NAME:
Eliana Vivier v. University of Southern California, et al.

CIVIL CASE COVER SHEET
Unlimited (Amount demanded exceeds \$25,000)
Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: BC707881
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case:
Auto Tort
Contract
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
Real Property
Enforcement of Judgment
Non-PI/PD/WD (Other) Tort
Unlawful Detainer
Miscellaneous Civil Complaint
Employment
Judicial Review
Miscellaneous Civil Petition

- 2. This case is not complex under rule 3.400 of the California Rules of Court.
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Sixteen (16)
5. This case is a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 30, 2018
Kevin T. Barnes, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
File this cover sheet in addition to any cover sheet required by local court rule.
If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

BY FAX

05/31/2018

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice—Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

**Employment**

- Wrongful Termination (36)
- Other Employment (15)

**Contract**

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease
  - Contract *(not unlawful detainer or wrongful eviction)*
- Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case—Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

**Real Property**

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

**Unlawful Detainer**

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

**Judicial Review**

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ—Administrative Mandamus
  - Writ—Mandamus on Limited Court Case Matter
  - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

**Enforcement of Judgment**

- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

**Miscellaneous Civil Petition**

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

05/31/2018

SHORT TITLE: Eliana Vivier v. University of Southern California, et al.

CASE NUMBER BC707801

## CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to Local Rule 2.3 In all new civil case filings in the Los Angeles Superior Court.

**BY FAX**

**Step 1:** After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

**Step 2:** In Column B, check the box for the type of action that best describes the nature of the case.

**Step 3:** In Column C, circle the number which explains the reason for the court filing location you have chosen.

### Applicable Reasons for Choosing Court Filing Location (Column C)

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Class actions must be filed in the Stanley Mosk Courthouse, Central District.</li> <li>2. Permissive filing in central district.</li> <li>3. Location where cause of action arose.</li> <li>4. Mandatory personal injury filing in North District.</li> <li>5. Location where performance required or defendant resides.</li> <li>6. Location of property or permanently garaged vehicle.</li> </ol> | <ol style="list-style-type: none"> <li>7. Location where petitioner resides.</li> <li>8. Location wherein defendant/respondent functions wholly.</li> <li>9. Location where one or more of the parties reside.</li> <li>10. Location of Labor Commissioner Office.</li> <li>11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury).</li> </ol> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Auto Tort**

**Other Personal Injury/Property Damage/Wrongful Death Tort**

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input checked="" type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11 1, 4, 11 1, 4, 11 1, 4, 11

05/31/2018

SHORT TITLE:

Eliana Vivier v. University of Southern California, et al.

CASE NUMBER

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above.	
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3	
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3	
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3	
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3	
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3	
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3	
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3	
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10	
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5	
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11	
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8	
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9	
	Real Property	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels _____	2, 6
		Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Other Real Property (26)		<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6	
Unlawful Detainer	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11	
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11	
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11	
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11	

SHORT TITLE: **Eliana Vivier v. University of Southern California, et al.**

CASE NUMBER

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
<b>Judicial Review</b>	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
<b>Provisionally Complex Litigation</b>	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
<b>Enforcement of Judgment</b>	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2, 5, 11
		<input type="checkbox"/> A6160 Abstract of Judgment	2, 6
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2, 9
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2, 8
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
		<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 8, 9
<b>Miscellaneous Civil Complaints</b>	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8 1, 2, 8
<b>Miscellaneous Civil Petitions</b>	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2, 3, 9
		<input type="checkbox"/> A6123 Workplace Harassment	2, 3, 9
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2, 3, 9
		<input type="checkbox"/> A6190 Election Contest	2
		<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender	2, 7
<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition		2, 3, 8 2, 9	

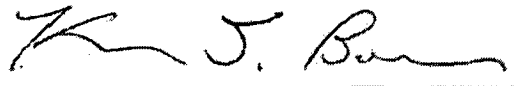
SHORT TITLE: Ellana Vivier v. University of Southern California, et al.	CASE NUMBER
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**Step 4: Statement of Reason and Address:** Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

<b>REASON:</b> <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input checked="" type="checkbox"/> 11.			<b>ADDRESS:</b> 1031 W. 34th Street
<b>CITY:</b> Los Angeles	<b>STATE:</b> CA	<b>ZIP CODE:</b> 90089	

**Step 5: Certification of Assignment:** I certify that this case is properly filed in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: May 30, 2018

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

05/31/2018